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Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
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Date:  
January 24, 2013

Re:

### LEGEND

Settlor 1	=
Settlor 2	=
Child 1	=
Child 2	=
Child 3	=
Child 4	=
Child 5	=
Child 6	=
GC 1	=
GC 2	=
GC 3	=
GC 4	=
GC 5	=
GC 6	=
GC 7	=
GGC 1	=
GGC 2	=
GGC 3	=
GGC 4	=
GGC 5	=
GGC 6	=
GGC 7	=
Trust 1	=
Trust 2	=

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trustees A =

Trustees B =

State =

Act =

State Statute =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter from your authorized representative dated August 6, 2012, and subsequent correspondence, requesting rulings on the generation-skipping transfer (GST) tax consequences resulting from the proposed division and merger of certain trusts.

### FACTS

You represent the facts to be as follows. Settlor 1 and Settlor 2 were sisters. Settlor 1 had three children, Child 1, Child 2, and Child 3. On Date 1, a date prior to September 25, 1985, Settlor 1 created three irrevocable trusts named respectively for her three children, Trust 1, Trust 2, and Trust 3 (collectively referred to as the M Trusts). The trust instruments creating each of these trusts are identical except that the initial income beneficiary of each trust was the child of Settlor 1 for whom the trust was named.

Article Third of each M Trust provides that the trust will terminate and all interests thereunder will vest 21 years after the date of death of the last survivor of Settlor 1, Child 1, Child 2, and Child 3, all of whom are deceased. Therefore, each M Trust will terminate on Date 2.

Article Fourth, Section I of each trust instrument provides that, upon the death of the child for whom the trust is named, the trustees, subject to the discretionary power in

the trustees to accumulate net income, shall distribute the entire net income from the trust in equal shares to Settlor 1's grandchildren, with the issue of a deceased grandchild to take such grandchild's share per stirpes. State law, Act, applies to each M Trust and prohibits accumulations of income by the trustees. Therefore, each M Trust must distribute income annually. The current income beneficiaries of the M Trusts are Settlor 1's living grandchildren, GC 1 and GC 2, and descendants of Settlor 1's deceased grandchildren, GGC 1, GGC 2, GGC 3, GGC 4, GGC 5, GGC 6, and GGC 7.

Article Fourth, Section IV of each M Trust provides that the trustees may pay to the beneficiary at the time entitled to receive income, such sum or sums from the corpus as the trustees in their sole discretion deem necessary or advisable in the best interests of the beneficiary. The trustees have the discretion to charge any such advances against future income, but if principal is encroached, the principal payment must be charged against the trust estate as a whole, without any attempt to allocate the payment to the share of a particular beneficiary.

On Date 3, a date after September 25, 1985, each M Trust merged with a substantially identical trust. The Internal Revenue Service issued a private letter ruling to each M Trust concluding that the merger would not affect the status of each trust as exempt from the GST tax based on the effective date of the GST tax, and would have no adverse income or gift tax consequences.

Settlor 2 had three children, Child 4, Child 5, and Child 6. On Date 4, a date prior to September 25, 1985, Settlor 2 created three irrevocable trusts named respectively for her three children, Trust 4, Trust 5, and Trust 6 (collectively referred to as the D Trusts). The trust instruments creating each of these trusts are identical except that the initial income beneficiary of each trust was the child of Settlor 2 for whom the trust was named.

Article Third of each D Trust provides that the trust will terminate and all interests thereunder will vest 21 years after the date of death of the last survivor of Settlor 2, Child 4, Child 5, and Child 6, all of whom are deceased. Therefore, each D Trust will terminate on Date 5.

Article Fourth, Section I of each trust instrument provides that, upon the death of the child for whom the trust is named, the trustees shall pay over and distribute the entire net income from the trust in equal shares to Settlor 2's grandchildren, or to the issue of a deceased grandchild, per stirpes. The current income beneficiaries of the D Trusts are Settlor 2's living grandchildren, GC 3, GC 4, GC 5, GC 6, and GC 7.

Article Fourth, Section VI of each D Trust provides that the trustees may pay to the beneficiary at the time entitled to receive income, such sum or sums from the corpus as the trustees in their sole discretion deem necessary or advisable in the best interests of the beneficiary. The trustees have the discretion to charge any such advances

against future income, but if principal is encroached, the principal payment must be charged against the trust estate as a whole, without any attempt to allocate the payment to the share of a particular beneficiary.

Trustees A currently serve as trustees for Trust 1, Trust 2, and Trust 3. Trustees B currently serve as trustees for Trust 4, Trust 5, and Trust 6. Pursuant to a Severance and Merger document, Trustees A propose to divide each M Trust to create equal, separate shares for each of Settlor 1's grandchildren who are now living or deceased with living descendants. Further, pursuant to a Severance and Merger document, Trustees B propose to divide each D Trust to create equal, separate shares for each of Settlor 2's grandchildren who are now living or deceased with living descendants. Each share so provided for a deceased grandchild would be further divided in separate shares per stirpes among the deceased grandchild's living descendants. The terms of each new trust, the Severed Trusts, will be substantially identical to the terms of the original trust from which it is created. Therefore each Severed Trust will provide that the entire net income of the trust must be distributed to the primary beneficiary and each Severed Trust will terminate no later than the time when the original trusts were required to terminate.

Following the severance, each primary beneficiary will have three identical trusts named for them. Therefore, Trustees A propose to merge the three M Trusts named for each primary beneficiary by transfer of all assets of those trusts to a single trust named for that primary beneficiary held on terms identical to the terms of those M Trusts. Similarly, Trustees B will merge the three D Trusts named for each primary beneficiary by transfer of all assets of those trusts to a single trust named for that primary beneficiary held on terms identical to the terms of those D Trusts.

Trustees A and Trustees B are located in State. The M Trusts and the D Trusts are administered under the laws of State. State Statute provides that a trustee has the power to sever any trust estate on a fractional basis into two or more separate trusts for any reason and to consolidate two or more trusts having substantially similar terms into a single trust.

You represent that no additions have been made to any M Trust or to any D Trust after September 25, 1985.

You have requested the following rulings:

1. The proposed division and modification of each original M Trust and D Trust to create the Severed Trusts will not subject the assets of the original M Trusts and D Trusts held in the Severed Trusts to federal GST tax under § 2601 by forfeiting the effective date exempt status of those assets.

2. The proposed merger of (i) the three Severed Trusts named for a descendant of Settlor 1 into a single trust named for that descendant, and (ii) the three Severed Trusts named for a descendant of Settlor 2 into a single trust named for that descendant will not subject the assets of the M Trusts, the D Trusts, the Severed Trusts, or the resulting single trust held for each descendant to federal GST tax under § 2601 by forfeiting the effective date exempt status of those assets.

### LAW AND ANALYSIS

Section 2601 imposes a tax on every GST which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the GST tax shall not apply to any GST under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added). Section 26.2601-1(b)(1)(ii) provides that any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in settlor's gross estate under § 2038 or 2042 if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, these rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2602-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the GST tax if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

Section 26.2601-1(b)(4)(i)(E), Example 5, illustrates a situation where a trust that is otherwise exempt from the GST tax is divided into two trusts. In 1980, Grantor established an irrevocable trust for the benefit of his two children, A and B, and their issue. Under the terms of the trust, the trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, per stirpes. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust for A and A's issue provides that the trustee has the discretion to distribute trust income and principal to A and A's issue in such amounts as the trustee deems appropriate. On A's death, the trust principal is to be distributed equally to A's issue, per stirpes. If A dies with no living descendants, the principal will be added to the trust for B and B's issue. The trust for B and B's issue is identical (except for beneficiaries), and terminates at B's death at which time the trust principal is to be distributed equally to B's issue, per stirpes. If B dies with no living descendants, principal will be added to the trust for A and A's issue. The division of the trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the division. In addition, the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

Section 26.2601-1(b)(4)(i)(E), Example 6, considers a situation where, in 1980, Grantor established an irrevocable trust for the benefit of Grantor's child, A, and A's issue. In 1983, Grantor's spouse also established a separate irrevocable trust for the benefit of the same child and issue. The terms of the spouse's trust and Grantor's trust are identical. In 2002, the appropriate local court approved the merger of the two trusts into one trust to save administrative costs and enhance the management of the investments. The merger of the two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the merger. In addition, the merger does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the trust that resulted from the merger will not be subject to the provisions of chapter 13.

In the present case, Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 were irrevocable on September 25, 1985. You have represented that no additions, actual or constructive, have been made to any of the trusts after that date. Accordingly, pursuant to § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the trusts are not subject to the GST tax.

The proposed divisions and the proposed mergers pursuant to the Severance

and Merger documents are similar to Example 5 and Example 6 in § 26.2601-1(b)(4)(i)(E). State Statute permits a trustee to sever any trust estate on a fractional basis into two or more separate trusts and to consolidate two or more trusts having substantially similar terms into a single trust.

Under these circumstances, the proposed divisions and subsequent mergers will not shift a beneficial interest to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the proposed divisions and subsequent mergers will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trusts.

Accordingly, based on the facts submitted and the representations made, we conclude:

1. The proposed division and modification of each original M Trust and D Trust to create the Severed Trusts will not subject the assets of the original M Trusts and D Trusts held in the Severed Trusts to federal GST tax under § 2601 by forfeiting the effective date exempt status of those assets.

2. The proposed merger of (i) the three Severed Trusts named for a descendant of Settlor 1 into a single trust named for that descendant, and (ii) the three Severed Trusts named for a descendant of Settlor 2 into a single trust named for that descendant will not subject the assets of the M Trusts, the D Trusts, the Severed Trusts, or the resulting single trust held for each descendant to federal GST tax under § 2601 by forfeiting the effective date exempt status of those assets.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by the appropriate parties. While this office has not verified any part of the material submitted in support of the request for rulings, it is subject to verification and examination.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

James F. Hogan  
Chief, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure  
Copy for section 6110 purposes

cc: